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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
Federal-State Joint Board on Universal )  
Service )

Dobson Cellular Systems, Inc. )  
Petition for Waiver of Sections 54.313 and )  
54.314 of the Commission's Rules )  
)  
)

CC Docket No. 96-45

**DOBSON CELLULAR SYSTEMS, INC.  
PETITION FOR WAIVER OF SECTIONS 54.313 AND 54.314  
OF THE COMMISSION'S RULES**

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August 3, 2005

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## TABLE OF CONTENTS

	Page
SUMMARY.....	3
I. BACKGROUND .....	5
II. REQUEST FOR WAIVER.....	8
A. The Limited Waiver Dobson Seeks Will Advance the Commission's Universal Service Goals.....	9
B. The Limited Waiver Dobson Seeks is Consistent With Commission Precedent.....	10
C. The Limited Waiver Dobson Seeks is Consistent With the Spirit of the Commission's March 17, 2005 Report and Order .....	11
III. CONCLUSION.....	13
Exhibit A September 28, 2004 Order Designating Dobson as an ETC in the Designated Areas	
Exhibit B The Oklahoma Corporation Commission's September 28, 2004 Letter Certifying Dobson's Use of Universal Service Support for the 2005 Calendar Year	
Exhibit C Supplemental Affidavit Certifying Dobson's Use of Federal Universal Service Support for the 2004 Calendar Year	
Exhibit D The Oklahoma Corporation Commission's June 29, 2005 Letter Certifying Dobson's Use of Universal Service Support for the 2004 Calendar Year	

## SUMMARY

Dobson Cellular Systems, Inc., for itself and on behalf of its subsidiary licensees Oklahoma RSA 5 Limited Partnership and Oklahoma RSA 7 Limited Partnership (collectively, "Dobson") requests waiver of Sections 54.313 and 54.314 of the Commission's Rules to enable Dobson to receive high-cost universal service support commencing September 28, 2004 – the date upon which the Oklahoma Corporation Commission ("OCC") granted Dobson's application for designation as a competitive federal eligible telecommunications carrier ("ETC") in certain areas of Oklahoma. Without the requested waiver, Dobson is ineligible to receive federal high-cost universal service support from September 28, 2004 through December 31, 2004 even though the Company fulfilled all of its obligations as a federal ETC during that time period. Because of the timing of its designation, Dobson cannot benefit from the recent revisions to the Commission's Rules.

Grant of the requested waiver will be consistent with the Commission's well-established precedent. It will also be consistent with the spirit of the Commission's March 17, 2005 *Report and Order*, amending 47 C.F.R. §§ 54.313 and 54.314 to provide relief to newly designated ETCs. Most importantly, grant of the requested waiver will advance the public interest and benefit consumers in rural and high-cost areas of Oklahoma by promoting the provision of universal service.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
Federal-State Joint Board on Universal )  
Service )  
Dobson Cellular Systems, Inc. )  
Petition for Waiver of Sections 54.313 and )  
54.314 of the Commission's Rules )

CC Docket No. 96-45

**To: Wireline Competition Bureau**

**DOBSON CELLULAR SYSTEMS, INC.  
PETITION FOR WAIVER OF SECTIONS 54.313 AND 54.314  
OF THE COMMISSION'S RULES**

Dobson Cellular Systems, Inc., for itself and on behalf of its subsidiary licensees Oklahoma RSA 5 Limited Partnership and Oklahoma RSA 7 Limited Partnership (collectively, "Dobson"), by its counsel and pursuant to 47 C.F.R. §§ 1.3 and 1.925(b), hereby requests waiver of Sections 54.313 and 54.314 of the Commission's Rules, 47 C.F.R. §§ 54.313 and 54.314. Specifically, Dobson requests waiver of the filing requirements set forth in 47 C.F.R. §§ 54.313(d)(3) and 54.314(d) to enable Dobson to receive high-cost universal service support commencing September 28, 2004, the date upon which the Oklahoma Corporation Commission ("OCC") granted Dobson's Application for designation as a competitive federal eligible telecommunications carrier ("ETC") in the State of Oklahoma.<sup>1</sup>

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<sup>1</sup> *Application of Dobson Cellular Systems, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause No. PUD 200300239, *Final Order Adopting the Report of the Administrative Law Judge* (rel. Sept. 28, 2004) ("ETC Order") (attached as **Exhibit A** hereto).

## **I. BACKGROUND**

Dobson is a provider of commercial mobile radio service ("CMRS") in the State of Oklahoma. On May 2, 2003, Dobson filed an Application with the OCC seeking designation as a competitive federal ETC in certain areas in Oklahoma.<sup>2</sup> On September 28, 2004, the OCC issued an Order designating Dobson as a competitive ETC throughout its requested service areas. Consistent with Commission practice, Dobson certified to the OCC that it would use all federal high-cost universal service support it received in 2005 only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended pursuant to Section 254(e) of the Telecommunications Act of 1996 (the "Act"). By letter dated September 28, 2004, the OCC certified to the Commission and the Universal Service Administrative Company ("USAC") Dobson's use of federal high-cost universal service support in Oklahoma for the 2005 calendar year. (See **Exhibit B** attached hereto).

On November 4, 2004, pursuant to 47 C.F.R. §§ 54.313(c) and 54.314(c), Dobson requested that the OCC file a supplemental certification with the Commission and USAC certifying the Company's use of federal universal service support from the date of Dobson's ETC designation (*i.e.*, September 28, 2004) through December 31, 2004. In support of the Company's request, Dobson certified that all federal high-cost universal service support received by the Company for the 2004 calendar year would be used only for the provision, maintenance and upgrading of facilities and service for which the support is intended. (See **Exhibit C** attached hereto).

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<sup>2</sup> *Application of Dobson Cellular Systems, Inc., for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause No. PUD 200300239, *Application for Designation as an Eligible Telecommunications Carrier* (May 2, 2003) ("*Application*").

In mid-November 2004, Dobson's Counsel followed up with the OCC to determine the status of the requested supplemental certification. Counsel diligently proceeded to contact OCC Staff on several occasions during the following months, but was unable to obtain a status report or any additional information regarding the Company's supplemental certification request. Counsel then contacted the OCC's Telecommunications Chief and was assured that OCC Staff would determine the status of the Company's request. On February 15, 2005, Counsel sent the Telecommunications Chief a copy of Dobson's letter and affidavit certifying its use of universal service funds for the 2004 calendar year that the Company had previously supplied to OCC Staff. On April 28, 2005, Counsel contacted OCC Staff and again submitted the Company's letter and affidavit to the Telecommunications Chief. The Telecommunications Chief then informed Dobson that additional information was needed before the OCC would certify Dobson's use of universal service support for the 2004 calendar year. After several discussions with OCC Staff, Dobson diligently compiled the requested information and provided it to the OCC on June 29, 2005. On that same day, the OCC finally issued letters to this Commission and USAC certifying Dobson's use of universal service support for the 2004 calendar year. This petition followed.

Dobson seeks a waiver of the annual state certification requirements set forth in Commission Rules 54.313(d)(3) and 54.314(d) that would otherwise require that the State of Oklahoma certify Dobson's use of federal high-cost universal service support on or before April 1, 2004 – over five months *before* Dobson was designated an ETC. Waiver of these rules will enable Dobson to begin to receive federal universal service support commencing as of the date of its designation as a competitive ETC in the State of Oklahoma (i.e., September 28, 2004).

Under FCC Rules 54.313 and 54.314, if a State intends for the incumbent and competitive ETCs within its jurisdiction to receive federal high-cost universal service support, it must annually file with the Commission and USAC a certification stating that all federal high-cost support will be used by the companies only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. 47 C.F.R. §§ 54.313(a) and 54.314(a). To qualify for receipt of high-cost universal service support beginning in the first quarter of a given year, an ETC must be certified by the State on or before October 1 of the prior calendar year. 47 C.F.R. §§ 54.313(d)(3)(i) and 54.314(d)(1). Certifications for the second through fourth quarters of a year must be received by January 1 of the current year, while certifications for the third and fourth quarters must be received by April 1. 47 C.F.R. §§ 54.313(d)(3)(ii)-(iii) and 54.314(d)(2)-(3). Certifications for only the fourth quarter must be received by July 1 of that year. 47 C.F.R. §§ 54.313(d)(3)(iv) and 54.314(d)(4).

In this case, Dobson was not designated as an ETC in Oklahoma until September 28, 2004, over five months *after* the April 1, 2004 deadline for filing the required certification in order to receive universal service support for the third and fourth quarters of 2004. Moreover, the OCC did not certify Dobson's use of high-cost universal service support for the 2004 calendar year until June 29, 2005. (See **Exhibit D** attached hereto).

According to the deadlines set forth in Sections 54.313(d)(3) and 54.314(d), the OCC would have been required to file Dobson's certification no later than April 1, 2004, to qualify the Company to receive high-cost universal service support for the third and fourth quarters of 2004. 47 C.F.R. §§ 54.313(d)(3)(iv) and 54.314(d)(4). However, because Dobson was not designated as a competitive ETC in Oklahoma until September 28, 2004, the OCC could not have done so by the April 1 deadline. Due to the timing of Dobson's designation and the OCC's certification

filing, Dobson also cannot benefit from the Commission's revisions to its rules to allow newly designated ETCs to receive support from the date of their designations. As a result, strict adherence to Sections 54.313 and 54.314 must be waived so that Dobson can begin to receive high-cost universal service support as of the date of its ETC designation – September 28, 2004 – consistent with the recent revisions adopted to the rules. Failure to grant the waiver would deprive Dobson of high-cost universal service support for the entire calendar year 2004, even though the Company commenced providing service as a federal ETC effective September 28, 2004.

## **II. REQUEST FOR WAIVER**

The Commission's Rules expressly provide for waiver of any Rule if good cause is first established. 47 C.F.R. § 1.3. In addition, Section 1.925(b)(3) provides for a waiver where it is shown that

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by the application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

47 C.F.R. § 1.925(b)(3). Consistent with these Rules, the Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

In this case, strict adherence to the state certification requirements set forth in Sections 54.313 and 54.314 would create the unintended consequence of preventing Dobson from receiving federal high-cost universal service support for the entire calendar year 2004, even



though the Company was designated and providing service as a competitive ETC effective September 28, 2004. Thus, Dobson would not receive timely and appropriate universal service support payments despite the fact that it was operating as an ETC and providing the supported services in Oklahoma from September 28 through December 31, 2004.

Granting the requested waiver will advance the public interest and benefit consumers in rural and high-cost areas of Oklahoma by promoting the provision of universal service. It will also be consistent with the Commission's numerous prior orders in which it has granted waivers to newly designated ETCs. Granting the requested waiver will also be consistent with the spirit of the Commission's March 17, 2005 *Report and Order* and amendments to Sections 54.313 and 54.314, which recognize how strict adherence to the certification deadlines causes unnecessary delay in receipt of support by newly designated ETCs.<sup>3</sup>

**A. The Limited Waiver Dobson Seeks Will Advance the Commission's Universal Service Goals**

Granting Dobson's request for waiver of the state certification requirements set forth in Sections 54.313 and 54.314 will further the Commission's public policy goals of bringing access to high quality telecommunications services to all citizens by enabling Dobson to receive support for the provision, maintenance, and upgrading of facilities and services commensurate with its service as a competitive ETC. Without timely access to this support, Dobson cannot begin to fulfill the promises of the Act: "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Pub. L. No. 104-104, 110 Stat. 56 (1996).

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<sup>3</sup>*In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC 05-46, ¶¶ 87-92 (rel. March 17, 2005) ("*Report and Order*").

Furthermore, the Commission has found that “competitively neutral access to support is critical to ensuring that all Americans have access to affordable telecommunications.”<sup>4</sup> Denying support to Dobson, a competitive ETC, for the 2004 calendar year merely because of the timing of the Company’s ETC designation would undermine the Commission’s goal of competitive neutrality.<sup>5</sup>

Universal service funding is vital to Dobson’s ability to carry out its mission as an ETC in Oklahoma because it will allow Dobson to pursue the construction and upgrading of its network to better serve customers within its designated ETC service areas. Dobson should not be unfairly handicapped, stalled, or otherwise delayed in pursuing its mission as an ETC by the strict application of rules that were never intended to undermine the purpose of an ETC designation. Dobson should not be denied several months worth of high-cost universal service support to which it is otherwise entitled simply because the State of Oklahoma could not file the certification required under Sections 54.313 and 54.314 by the April 1, 2004 deadline – which was over five months *before* Dobson’s designation as a competitive ETC in Oklahoma.

**B. The Limited Waiver Dobson Seeks is Consistent With Commission Precedent**

The limited waiver Dobson seeks is fully consistent with, and supported by, well-established Commission precedent. Indeed, the Commission has granted numerous similar

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<sup>4</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Ninth Report and Order and Eighteenth Order on Reconsideration*, FCC 99-306, ¶¶ 89-90 (rel. Nov. 2, 1999), *rev’d in part and remanded in part*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

<sup>5</sup> See *In the Matter of Federal-State Joint Board on Universal Service, Centennial Cellular Tri-State Operating Partnership, Centennial Claiborne Cellular Corp., Petition for Waiver of Section 54.313(d) of the Commission’s Rules and Regulations*, CC Docket No. 96-45, *Order*, DA 04-2535, ¶ 9 (rel. Aug. 16, 2004) (“*Centennial Order*”); *In the Matter of Federal-State Joint Board on Universal Service, Grande Communications, Inc. Petition for Waiver of Sections 54.307 and 54.314 of the Commission’s Rules and Regulations*, CC Docket No. 96-45, *Order*, DA 04-2534, ¶ 10 (rel. Aug. 16, 2004) (“*Grande Order*”).

waiver requests.<sup>6</sup> In granting such waivers, the Commission has identified an ETC designation date as being a “special circumstance” that warrants a limited waiver to allow a new ETC to file retroactive certifications so that ETC support can timely commence.<sup>7</sup> Further, in granting a waiver to the State of West Virginia for the late filing of its certification for non-rural ETCs, the Commission reasoned that “the potential harm that would be suffered by customers [of the ETC...] justifies a waiver” and found that the loss of three months worth of universal service funding in similar circumstances would be “egregious.”<sup>8</sup> In this case, absent the requested waiver, Dobson will be denied universal service support the Company is otherwise entitled to for the 2004 calendar year.<sup>9</sup>

C. **The Limited Waiver Dobson Seeks is Consistent With the Spirit of the Commission’s March 17, 2005 Report and Order**

Subsequent to Dobson’s designation as an ETC in Oklahoma, the Commission released its March 17, 2005 *Report and Order* concerning various aspects of the ETC designation

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<sup>6</sup> See, e.g., *In the Matter of Federal-State Joint Board on Universal Service, N.E. Colorado Cellular, Inc., Petition for Waiver of Section 54.314(d) of the Commission’s Rules*; CC Docket No. 96-45, Order, DA 03-2482 (rel. July 25, 2003) (“*N.E. Colorado Order*”); *In the Matter of Federal-State Joint Board on Universal Service, Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, CC Docket No. 96-45, Order, DA 03-1169 (rel. Apr. 17, 2003) (“*Guam Cellular Order*”); *In the Matter of Federal-State Joint Board on Universal Service, RFB Cellular, Inc., Petition for Waiver of Section 53.314(d) and 54.307(c) of the Commission’s Rules and Regulations*, CC Docket No. 96-45, Order, DA 02-3316 (rel. Dec. 4, 2002) (“*RFB Order*”).

<sup>7</sup> *N.E. Colorado Cellular Order*, ¶ 6; *Guam Cellular Order* ¶ 6; *RFB Order*, ¶ 8.

<sup>8</sup> *In the Matter of Federal-State Joint Board on Universal Service, West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, CC Docket No. 96-45, Order, DA 01-86, ¶ 7 (rel. Mar. 13, 2001).

<sup>9</sup> Dobson was designated as an ETC on September 28, 2004. Based on the OCC’s certification on September 28, 2004 (prior to the October 1, 2004 filing deadline), Dobson became eligible for support beginning in the first quarter of 2005. 47 C.F.R. §§ 54.313(d)(3)(i) and 54.314(d)(1).

process. In the *Report and Order*, the Commission specifically noted that due to the timing of their ETC designation date, newly designated ETCs may be unable to comply with the certification filing requirements.<sup>10</sup> The Commission further noted that, in such a case, the ETC could “suffer significant delay in receipt of support.”<sup>11</sup> As described herein, Dobson faces the precise problem the Commission described in the *Report and Order*.

In the *Report and Order*, the Commission specifically sought to address this problem by promulgating a series of new rules deeming newly designated ETCs eligible for support effective as of their ETC designation date, provided that the required certifications are filed within 60 days of the carrier’s ETC designation.<sup>12</sup> These amendments to the Commission’s Rules became effective on June 24, 2005.<sup>13</sup>

Because of the timing of its ETC designation, Dobson will not be able to take advantage of the new rules promulgated in the *Report and Order*. However, the new rules and *Report and Order* provide additional support for Dobson’s request that the Commission waive the certification requirements of Section 54.313 and 54.314. In the *Report and Order*, the Commission recognized that timing problems have arisen with regard to ETC designation and remedied them; Dobson’s requested waiver merely asks the Commission to provide the Company similar relief.<sup>14</sup>

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<sup>10</sup> *Report and Order*, ¶¶ 89, 91.

<sup>11</sup> *Id.*, ¶ 91.

<sup>12</sup> *Id.*, ¶ 92; new sections 54.313(d)(3)(vi) and 54.314(d)(6)(iv).

<sup>13</sup> *Id.*, ¶ 109; 47 C.F.R. § 1.427(a). The *Report and Order* was published in the Federal Register on May 25, 2005. 70 F. R. 29960 (May 25, 2005).

<sup>14</sup> Moreover, the Company attempted to comply with the spirit of the new rules by requesting the supplemental certification shortly after being designated an ETC by the OCC. If not for the delay in receiving the OCC’s certification, it would have been filed with USAC and this Commission within the 60 day time period required by the new rules.

For all the reasons stated above, good cause exists for the Commission to waive the state certification filing deadlines set forth in Sections 54.313(d)(3) and 54.314(d) so that Dobson may receive high-cost universal service support in Oklahoma for the Company's designated service areas commencing September 28, 2004. To do otherwise would deprive Dobson of much needed high-cost universal service support for the entire calendar year of 2004, even though the Company began providing service as a federal ETC effective September 28, 2004.

### **III. CONCLUSION**

For the forgoing reasons, the Commission should grant Dobson's requests for waiver of the certification filing deadlines set forth in 47 C.F.R. §§ 54.313(d)(3) and 54.314(d) and accept the OCC's June 29, 2005 supplemental certification as timely filed for purposes of qualifying Dobson to begin receiving high-cost universal service support effective September 28, 2004.

Respectfully submitted,

Dated: August 3, 2005

**DOBSON CELLULAR SYSTEMS, INC.**

By: 

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*Its Counsel*

**EXHIBIT A**

**September 28, 2004 Order Designating Dobson as an ETC in the Designated Areas**

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

*DBS*  
*SAS*  
APPLICATION OF DOBSON CELLULAR )  
SYSTEMS, INC. FOR DESIGNATION AS )  
AN ELIGIBLE TELECOMMUNICATIONS )  
CARRIER PURSUANT TO THE )  
TELECOMMUNICATIONS ACT OF 1996 )

CAUSE NO. PUD 200300239

ORDER NO. 495564

**FINAL ORDER ADOPTING THE REPORT OF THE  
ADMINISTRATIVE LAW JUDGE**

BY THE COMMISSION:

The Oklahoma Corporation Commission being regularly in session and the undersigned Commissioners being present and participating, there comes on for consideration the July 7, 2004, Report of the Administrative Law Judge.

On July 16, 2004, Dobson Cellular Systems, Inc. ("Dobson") filed an Appeal and Exceptions of Dobson Cellular Systems, Inc. The hearing on the appeal was held on August 10, 2004, before the Commission *en banc*.

The Commission, having considered the Report of the Administrative Law Judge, attached hereto as Exhibit A, and made a part hereof, and the Appeal and Exceptions of Dobson Cellular Systems, Inc., attached hereto as Exhibit B, and made a part hereof, finds that the Report of the Administrative Law Judge shall be adopted, designating Dobson Cellular Systems, Inc. as an Eligible Telecommunications Carrier ("ETC") within the service area of each of the 5 Rural Telephone Companies for the purpose of receiving federal universal service support, with the following conditions stated in the report:

1. Dobson shall comply with all the requirements set forth in the Stipulation presented to the ALJ on November 19, 2003, and filed herein on December 4, 2003.

2. Dobson shall furnish the Director of the Public Utility Division copies of its universal service offerings for which Dobson seeks federal universal service support, within 180 days of the Commission Order

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granting Dobson ETC status, or at least 30 days prior to commencing to provide the supported services, whichever shall occur first. Failure to submit the required tariffs within 180 days of ETC designation may result in revocation of the ETC designation for Dobson, after notice and hearing.

3. Dobson shall agree to be bound by the requirements of OAC 165:55-23-1 *et seq.* with regard to all of its product offerings for which it seeks funding from the federal universal service fund

4. Dobson shall agree to accept carrier of last resort responsibility within the service area for which it is granted ETC designation.

The Commission having considered the arguments of Dobson and the other parties finds that there is insufficient evidence in the record to establish 1000 minutes as the minimum amount of local usage to be included in Dobson's universal service product. Title 47 U.S.C § 214(e)(1) requires that an ETC provide the services supported by the federal universal service mechanisms throughout the designated service area and local usage is one of the services supported by the federal universal service support mechanisms. Dobson is therefore required to provide local usage and the Commission, while believing that it is imperative that a universal service product contain a reasonable amount of local usage minutes, will not require Dobson to include 1000 minutes per month of "local usage" within its universal service product.

The Commission further finds that footnote No. 21 in the ALJ report incorrectly states that OAC 165:55-23-1 *et seq.* establish service standards for Wireless Eligible Telecommunications carriers, which are applicable only to the provision of Lifeline Service and Link-up by designated wireless ETCs. The Commission's newly adopted service standards for Wireless ETCs are applicable to all of the Supported Services provided by a Wireless ETC, not only to Lifeline and Link-up services. Therefore, if Dobson agrees to be bound by OAC 165:55-23-1 in order to obtain designation as an ETC, all of the Supported Services for which Dobson seeks funding from the federal universal service fund will be subject to the service standards set forth in OAC 165:55-23-1 *et seq.*

The Commission further finds that Dobson should be designated an ETC within the requested wire centers served by SBC Oklahoma and Valor.



**ORDER**

IT IS THEREFORE THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION that the Report of the Administrative Law Judge attached hereto is hereby approved, except that the Applicant is not required to include 1000 minutes per month of "local usage" within its universal service product. However, the Applicant must file in this cause a document "accepting" the conditions stated above in order to be designated an ETC within the service areas of each of the 5 Rural Telephone Companies.

IT IS FURTHER ORDERED that the above findings are hereby the Order of the Commission.

IT IS FURTHER ORDERED that Dobson Cellular Systems, Inc. is hereby designated an ETC within the service territory of Southwestern Bell Telephone, L.P., d/b/a SBC Oklahoma, Valor Telephone Company, for the purpose of receiving federal universal support. Upon the filing in this cause of an acceptance of the conditions set forth above, Dobson Cellular is designated an ETC within the service territories of the 5 (five) Rural Telephone Companies: Beggs Telephone Company, Canadian Valley Telephone Company, Carnegie Telephone Company, Dobson Telephone Company and Oklahoma Telephone & Telegraph, Inc., for the purpose of receiving federal universal service support.

OKLAHOMA CORPORATION COMMISSION

*Denise A. Bode*

DEMISE A. BODE, Chairman


*Bob Anthony*

BOB ANTHONY, Vice Chairman

*Jeff Cloud*

JEFF CLOUD, Commissioner

DONE AND PERFORMED THIS 28 DAY OF Sept, 2004, BY ORDER  
OF THE COMMISSION.

  
PEGGY MITCHELL, Secretary

**FILED**

JUL - 7 2004

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA  
COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

APPLICATION OF DOBSON CELLULAR  
SYSTEMS, INC. FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER  
PURSUANT TO THE TELECOMMUNICATIONS  
ACT OF 1996 )  
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CAUSE NO. PUD 200300239

HEARING: November 19, 2003  
Before Maribeth D. Snapp, Administrative Law Judge

APPEARANCES: Marc Edwards and Mark J. Ayotte, Attorneys for Dobson Cellular  
Systems, Inc.  
Ron Comingdeer, Attorney for Beggs Telephone Company,  
Canadian Valley Telephone Company, Carnegie Telephone  
Company and Oklahoma Telephone & Telegraph, Inc.  
Kim Brown, Attorney for Totah Telephone Company, Inc.,  
Chouteau Telephone Company, Inc., and Pine Telephone  
Company, Inc.  
David Dykeman, Deputy General Counsel, Public Utility Division,  
Oklahoma Corporation Commission,

### REPORT OF THE ADMINISTRATIVE LAW JUDGE

#### **Procedural History**

Dobson Cellular Systems, Inc. ("Dobson") filed an application in the above styled Cause on May 2, 2003, seeking designation as an Eligible Telecommunications Carrier ("ETC") within the service areas of Southwestern Bell Telephone Company and Valor Telephone Company. Additionally, Dobson seeks designation as an ETC within the service areas of 5 Rural Telephone Companies ("Rural Telephone Companies"): Beggs Telephone Company, Canadian Valley Telephone Company, Carnegie Telephone Company, Dobson Telephone Company and Oklahoma Telephone & Telegraph, Inc.

A motion for intervention was filed July 22, 2003 by Totah Telephone Company, Chouteau Telephone Company and Pine Telephone Company. Dobson objected to the intervention because it was not seeking ETC designation within the service areas of these three telephone companies. On August 7, 2003, Order No. 478971 was issued, granting the intervention.

On August 7, 2003, Order No. 478972 was issued, which established a procedural schedule in this Cause. On November 3, 2003, Order No. 482235 was issued, establishing an amended procedural schedule.

A hearing was held before the undersigned ALJ on November 19, 2003, at which time the parties presented the ALJ a Stipulation signed by all the parties. After hearing the testimony presented in support of the Stipulation, the ALJ took the Cause under advisement.

Post-hearing briefs were filed by the parties on December 5, 2003.

### Summary of Evidence

Thomas A. Coates provided direct and rebuttal testimony on behalf of Dobson Cellular Systems, Inc. Mr. Thomas testified that he is currently employed by Dobson as Vice President of Mergers and Acquisitions and provides strategic and analytical services for Dobson and its subsidiary licensees.

In his direct testimony, Mr. Thomas explained how Dobson meets the federal criteria to be designated as an ETC. To be designated as an ETC, a telecommunications carrier must show it is a common carrier which offers the nine (9) supported core services. Dobson, as a provider of CMRS service, is a common carrier which currently provides all of the supported core services with the exception of "toll limitation for qualifying low-income customers" as related to the federal Lifeline program. Dobson is capable of providing the required toll-blocking and will participate in offering Lifeline service once designated as an ETC. To be designated as an ETC, a telecommunications carrier must also advertise the availability of the supported services. The Dobson brand name in Oklahoma currently advertises through newspaper, radio, television, billboard, print advertising, point-of-sale marketing and over the internet. Dobson also provides service under the name "Cellular One" and currently advertises through similar media outlets and over the internet. An additional source of advertising is provided through Dobson's eleven (11) retail store locations in its authorized Oklahoma service areas. Dobson will use the same media that it currently employs to advertise its supported services throughout its designated service areas. Dobson seeks designation as an ETC in study areas of rural telephone companies or wire centers served by non-rural companies.

In his direct testimony, Mr. Thomas also explained the "public interest" standard that applies to designating an additional ETC in an area served by a rural telephone company. A public interest inquiry should look to whether consumer benefits will be outweighed by any demonstrated adverse impacts on consumers resulting from the designation. Designating Dobson as an additional ETC in its requested service areas will promote competition and provide increased benefits to consumers, including customer choice and innovative services in rural areas where competitive service providers are hard to find. Competition is in the public interest because it brings choice. The benefits of choice include lower prices, different services or simply reflect the unique advantages of the differing technologies that will be introduced through competition. As a result, designating Dobson as an ETC will preserve as well as promote universal service.

Mr. Thomas concluded by testifying that Dobson's proposed service area should not raise concern over "cherry picking" because Dobson included all rural telephone study areas where it can meet its obligation to provide service as an ETC based on its coverage area.

In his rebuttal testimony, Mr. Coates responded to testimony filed by Paul Cooper, Robert Rozell and staff witness Barbara Mallett. Mr. Coates clarified that Dobson only seeks designation as an ETC so it can be eligible to receive federal universal support and is not seeking designation for the purpose of receiving State support from the OUSF at this time. Mr. Coates also clarified several issues regarding the ETC service areas for which Dobson seeks designation. Dobson is seeking designation only in certain wire centers of SBC Oklahoma and Valor and not in the entire study area of each of those companies.

In response to Mr. Cooper's testimony filed on behalf of Chouteau Telephone Co., Pine Telephone Co. and Totah Telephone Co., Mr. Coates first noted that Dobson is not seeking ETC designation in any of the areas served by those ILECs. Mr. Cooper's recommendation that Dobson implement "per minute blocking" is not required by the FCC and not technically possible for Dobson. Dobson will comply with Lifeline and offer toll blocking to all qualified Lifeline customers. Mr. Cooper's conclusion that Dobson has areas in its requested ETC service area in which it does not provide adequate service should not be adopted. Dobson's application did identify the FCC-licensed areas in Oklahoma in which Dobson can and does provide service. Although Dobson does not provide ubiquitous service throughout all of the identified areas, the FCC does not require it and Dobson expects that access to universal service funding will allow Dobson to provide better and more complete service in those areas. Mr. Cooper's speculation as to the scope of Dobson's current signal coverage area is meaningless because it is based on an incomplete listing of tower locations, cell sites and an assumed service radius of 8 miles signal coverage per tower. Dobson currently has 65 cell sites within the areas which provide coverage of virtually the entire licensed areas.

In response to Mr. Rozell's concern that a small portion of Dobson Telephone's Taloga exchange is outside Dobson's FCC-licensed area, Mr. Coates noted that Dobson Telephone has not intervened in this case and Staff witness Mallett recommends designation in the Dobson Telephone area. Dobson can provide service to a customer residing in any portion of the Taloga exchange, even if a portion is outside Dobson's FCC-licensed area via a roaming partner. When using their phone west of Highway 183, the customer would still be in Dobson's licensed service area and receive service via Dobson's facilities. Therefore, it is unnecessary for the FCC to modify the Dobson Telephone study area as suggested by Mr. Rozell.

Mr. Coates also testified that Dobson is not seeking to have a choice of where and whom to serve. Not only is Dobson required to offer services throughout the designated areas, it is interested in serving as many customers as possible and hopes

to expand network coverage with the assistance of universal service support. In his prefiled testimony, Mr. Cooper argued that receipt of federal universal service support would not result in reasonable rates for its customers. However, Mr. Coates testified that although ETCs are required to provide nine basic supported services, Dobson's service offerings will only be similar and not identical to the offerings of the ILECs. Therefore, it is not appropriate to compare or attempt to require identical pricing. Additionally, the FCC, in establishing ETC requirements, has assured the provision of quality services at just, reasonable and affordable rates. Finally, there is a federal prohibition of a state from regulating the rates or entry of a CMRS provider. The choice of whether Dobson's rates are affordable is best left to the customer.

In his rebuttal testimony, Mr. Coates also addressed the public interest issue which is relevant only in an area served by a rural telephone company. Designating Dobson as an ETC in areas served by rural telephone companies is in the public interest. Dobson is in the process of converting its network to Global System for Mobile Communications ("GSM") and General Packet Radio Service ("GPRS") which will significantly improve signal coverage and voice quality for customers using Dobson's services. It will also allow rural customers to obtain state-of-the-art wireless data services that are available in most urban areas. These facilities will also be used to provide supported services. In response to Mr. Cooper's argument that these network improvements are already planned, Mr. Coates testified that Dobson's decisions about where to add facilities, how to add capacity and whether it can accomplish its network objectives in Oklahoma will be affected by the ability to access universal service support. Additionally, Mr. Cooper's broad statements about Dobson's nationwide costs tells the Commission nothing about what Dobson's costs are or will be in the high-cost services areas in Oklahoma. Again, Dobson's decisions about what it can accomplish and invest in Oklahoma will depend on access to high cost funding. The question is not whether Dobson is a lower cost provider when compared to an individual ILEC or ILECs in general but whether the rural areas have a higher cost of service than urban areas. There is no doubt that Dobson has higher costs of service in rural areas. Dobson's goal, and an important goal of universal service, is to bring rural consumers the services which urban consumers already have.

Mr. Coates also testified that Mr. Cooper's analysis of Dobson's investment decisions assumes that Dobson's business strategy is based solely on making constant improvements to facilities without regard to the other demands of Dobson's business, corporate strategy or various market and capital forces. When Dobson makes acquisitions or pays down debt it is based on the belief that it will make Dobson a stronger, more successful company in the long run. Long term financial health is important to investors and is good for customers and potential customers in rural areas.

Mr. Coates testified that he does not agree with Mr. Rozell's argument that there is no need for competitive universal service in high cost areas. The FCC has indicated that if high costs areas can support competition, competitive universal service should be funded. There is no reason an ILEC should have exclusive access to funding and protection from competition simply because it is an ILEC. Mr. Coates also testified that

he does not agree with Mr. Rozell that Dobson should prove its costs to demonstrate its need for support. Mr. Rozell has no information regarding Dobson in Oklahoma to support his claim that Dobson would be receiving funds in excess of its costs and has not explained any fact to suggest that any area of a rural ILEC is unable to support competition from Dobson.

Mr. Coates testified that any impact that granting Dobson's application would have on the wireless market would be lower prices for wireless customers in rural areas. However, this would not be bad for consumers. In addition, the FCC is responsible for regulating the wireless industry and to Mr. Coate's knowledge, has never hesitated to designate a qualified wireless carrier as an ETC. Mr. Coates testified that Dobson's rates are reasonable and that Dobson provides a good value to Oklahoma customers. It is the customers that ultimately decide whether the rates of Dobson are reasonable by taking Dobson's service over another carrier's service.

Mr. Coates concluded his testimony by stating that Dobson will comply with all applicable requirements by offering Lifeline and Linkup to its customers and by annually certifying use of the federal funds. Dobson will also respond to any concerns the Commission has regarding continued compliance with ETC criteria. However, Dobson does not agree with the ILECs suggestion that additional "conditions" should apply to Dobson as an ETC. Dobson is a wireless carrier regulated by the FCC and that should not change simply because of a designation as an ETC.

Don J. Wood provided rebuttal testimony on behalf of Dobson Cellular Systems, Inc., including its subsidiary licensees, Oklahoma RSA 5 Limited Partnership and Oklahoma RSA 7 Limited Partnership (collectively, "Dobson"). Mr. Wood testified he is a principal in the firm of Wood & Wood, an economic consulting firm and provides economic and regulatory analysis of the telecommunications, cable, and related convergence industries with an emphasis on economic policy, competitive market development, and cost-of-service issues. Mr. Wood was also employed in the local exchange industry by BellSouth Services, Inc., where his duties included performing cost analyses of new and existing services, and MCI Telecommunications Corporation as Manager of Regulatory Analysis for the Southern Division and as Manager of MCI's Economic Analysis and Regulatory Affairs Organization. Mr. Wood has previously testified on telecommunications issues before the regulatory commissions of thirty-five states, Puerto Rico and the District of Columbia. Mr. Wood is familiar with the application of universal service mechanisms at both the state and federal level. Most recently, he analyzed applications of carriers seeking designation as an ETC and has presented testimony regarding such applications in a number of states.

In his rebuttal testimony, Mr. Wood addressed the prefiled testimony of Paul L. Cooper on behalf of Chouteau Telephone Company, Pine Telephone Company, Inc. and Totah Telephone Company, Inc. and Robert Rozell on behalf of Beggs Telephone Company, Canadian Valley Telephone Company, Carnegie Telephone Company and Oklahoma Telephone & Telegraph, Inc. (collectively the "rural ILECs") which attempt to persuade the Commission to deny Dobson's request for designation as an ETC.

Mr. Wood testified that neither Mr. Cooper nor Mr. Rozell presented any valid public policy or factual reason why the Commission should not grant Dobson's Application.

Mr. Wood first addressed the questions before the Commission in this proceeding and the applicable federal requirements relating to Dobson's designation as an ETC. Mr. Wood testified that for the non-rural areas identified in Dobson's Application that are served by non-rural ILECs, the only relevant question before the Commission is whether Dobson has committed to offer and advertise the nine supported services throughout the proposed service areas. Mr. Wood testified that the question had been fully addressed in the testimony of Thomas Coates. In addition to the above-mentioned question, for areas identified in Dobson's Application that are served by rural ILECs, a second relevant question before the Commission is whether the designation of Dobson as an additional ETC in each of the rural ILEC areas is in the public interest. Mr. Wood testified that the answer to this question was also addressed by Mr. Coates' testimony.

Mr. Wood testified that the questions outlined above must be the focus of review made by the regulators in each case, whether it be the state regulatory bodies or the FCC. The purpose of the proceeding is not, as Mr. Cooper and Mr. Rozell have suggested, determining whether the introduction of competition for basic telecommunications services in rural areas is in the public interest. That question has already been answered and the policy direction set by both Congress and the FCC. Mr. Wood testified that the overarching principle which must be considered is the interests of the public, specifically, the rural consumers of telecommunications services. The questions to be addressed in this proceeding concern the facts of Dobson's Application. The FCC and Fifth Circuit Court of Appeals have been clear that the purpose of the federal universal service support mechanisms is to protect rural consumers of telecommunications services, not to protect incumbent ILECs. However, the testimony of the witnesses for the rural ILECs now seek to re-litigate the FCC's decisions regarding the operation of the federal universal service support mechanisms in rural areas, and are specifically asking the Commission to engage in a process of second guessing Congress and the FCC regarding (1) the benefits of competitive entry and (2) the most effective means of ensuring that consumers in rural areas have access to basic telecommunications services at reasonable rates. Mr. Wood testified that this is not the correct forum for such a debate.

Mr. Wood testified that neither Mr. Cooper nor Mr. Rozell had provided any specific facts related to any of the rural ILEC service areas that would justify a rejection of Dobson's Application. Although Mr. Cooper and Mr. Rozell provided a litany of general concerns and speculation, they did not offer any facts that could form the basis of a decision that it is not in the public interest to designate Dobson as an ETC in each of these areas.

Mr. Wood also testified that the principles presented in an OPASTCO white paper have no relevance and provide no specific facts to support an argument that the designation of Dobson as an additional ETC in the requested rural ILEC service areas would not be in the public interest. To the extent that the OPATSCO principles have



relevance in any context, it is at the level of the Joint Board's Inquiry into several broad federal universal service issues and the FCC's ultimate decision regarding those issues. However, Mr. Wood testified that there is no question before the Commission in this proceeding to which the OPATSCO principles provide a potential answer.

In response to Mr. Rozell's argument for a cost-benefit analysis, Mr. Wood testified that the application of a cost-benefit analysis is appropriate as long as both the benefits and costs are specific to this proceeding. Dobson has presented, through the testimony of Mr. Coates, facts that are specific to the operation of Dobson in the Oklahoma service areas in question.

Mr. Wood testified that as a non-ILEC applicant for ETC designation, Dobson clearly has a burden to demonstrate its ability and commitment to offer the nine supported services throughout its requested service areas and that it will advertise such services. Dobson met this burden in Mr. Coates' testimony and the Staff agrees that the required demonstration has been made. Mr. Rozell argued that Dobson should also be required to prove that no harm will come to the rural ILEC serving the areas in question. Mr. Wood testified that Dobson cannot and should not be expected to prove at the onset that no facts of harm exist. Although the ILECs are in the best position to bring forth such facts, they failed to do so in their prefiled testimony for any rural ILEC area.

Mr. Wood testified that Mr. Cooper's argument that rural ILECS should be protected from competitive entry because § 251 of the Act contains a rural telephone company exception has no merit. The purpose of the Act is to provide a "pro-competitive" framework to provide telecommunications services to Americans by opening the telecommunications market to competition. Dobson is seeking to do exactly what the Act contemplates.

Mr. Rozell argued that universal service funds have historically been designed to ensure that Americans have the opportunity to access high quality telecommunications services at reasonable prices and to ensure that regulated companies can recover their investments to provide such services. In response, Mr. Wood testified that the Act's stated objective is to ensure that consumers, including low-income consumers in rural, high-cost areas have access to telecommunications services that are comparable to those available in urban areas. Mr. Wood testified that he does not agree that the purpose of universal service funds is to protect carriers. Mr. Wood testified that the FCC and the courts have made clear that the definition of universal service in the Act is a mechanism to protect consumers, not carriers. Mr. Wood also testified that the FCC has put the ILECs on notice that the form of cost recovery in the existing mechanism is temporary, and support that is independent of the rural ILECs imbedded costs will be implemented.

In the second portion of his testimony, Mr. Wood addressed the question of whether the designation of Dobson as an additional ETC in each of the areas served by rural ILECs is in the public interest. Mr. Wood testified that based upon his review of

Dobson and its Application, that the designation of Dobson as an additional ETC, and the competitive service offerings made possible by such a designation, will provide benefits, both short term and long term, to end-users. Over the short term, consumers will benefit from a choice of suppliers that represent different technologies, and can choose the technology that best meets their need. Over the long term, consumers will benefit as competitive market forces act to make all providers, including a rural ILEC, more efficient and responsive to consumer needs. Mr. Wood testified that the Commission can expect to realize these same results in Oklahoma by designating Dobson as an additional ETC in the rural ILEC areas identified in the Application.

Mr. Wood testified that the impact of competitive entry in rural areas is important for two reasons. First, the existence of competitive options for telecommunications services, particularly the availability of wireless service, is important for rural economic development. It allows rural areas to compete with their urban and suburban counterparts to attract investments and jobs. Second, the availability of affordable and high-quality wireless service is extremely important in rural areas for health and safety reasons. The availability of even the highest quality wireline service is no substitute for mobile service with broad geographic coverage, simply because the wireline service is often physically not there when needed.

Mr. Wood testified that Dobson has committed to offer and advertise the nine supported services throughout the proposed service areas. Dobson will also offer services that will provide general and specific benefits to consumers. End-users will be able to choose the technology that best meets their individual needs, and rate plans that allow them to more closely match the service they receive (and pay for) with their calling patterns and frequency. End-users will also have greater access to the personal and public safety benefits of wireless service. Mr. Wood testified that there is no fact or issue specific to Dobson or the service areas within which it seeks ETC designation in Oklahoma that would outweigh those benefits.

Although Mr. Cooper argued that Dobson's request for ETC designation should be denied because Dobson is already providing service in some of the rural ILEC areas in question, Mr. Wood testified that there is no dispute that Dobson is currently providing some services in some of the areas served by the rural ILECs in Oklahoma. However, Dobson now seeks the ability to make a commitment to provide the supported services throughout these service areas in direct competition with the rural ILECs; something that, without universal service support funds, it could not do on an even playing field.

Mr. Wood testified that he does not agree with Mr. Cooper and Mr. Rozell's argument that Dobson should not receive support because some wireless carriers provide some services in rural areas without support. Mr. Wood testified that although some wireless carriers, including Dobson, are providing some services in rural ILEC markets, the market is not competitive with respect to the services that Dobson is committed to offering. Mr. Wood also noted that the rural ILECs in Oklahoma also did not begin providing service with a network whose reach extended throughout their current service areas; they expanded their facilities over time while receiving implicit or

explicit universal service support. At no time was that support withheld because they were already providing wireline service in some part of those areas. The entry and expansion of a competitive carrier such as Dobson is not fundamentally different and the outcome is consistent with the objectives of the Act.

Mr. Wood also testified that the universal service support funds could not be used improperly. Multiple opportunities for monitoring are in place to ensure that funds are not improperly used. Even in a situation where a wireless carrier provides more than one line for the price of one, the per-line costs and support would be properly matched and no abuse of the system would occur. Mr. Wood also testified that despite Mr. Cooper's argument to the contrary, receipt of universal services support funds would also not result in a windfall to Dobson. First, Mr. Cooper's analysis was based on nationwide costs to serve existing areas rather than the costs to provide the supported services throughout Dobson's requested service areas in Oklahoma. A competitive ETC's support amounts are not based on the carrier's costs or need for support, so the claim that Dobson has not demonstrated its need for support is irrelevant. Second, even if Dobson's per-line costs prove to be lower than the those of the rural ILECs, no windfall can occur because the rules specifically limit the use of the funds to investment in, and operation of, network facilities in high cost areas.

In response to Mr. Cooper's suggestion that it would create a "problem" if Dobson were designated an ETC while its CMRS competitors do not receive support, Mr. Wood testified that the proper focus of the public interest determination in this proceeding is a comparison of the incumbent ETC and the applicant for ETC status. The Commission's approach to ETC designations must be competitively and technologically neutral. It is not proper to draw comparisons only among CMRS providers.

Mr. Cooper previously argued Dobson should not be granted designation as an ETC because other carriers will be forced to seek such a designation and the size of the federal universal service support funds would increase needlessly. In response, Mr. Wood testified that experience has shown that the designation of a wireless carrier as an ETC in a given geographic area has not resulted in a flood of petitions. First, wireless carriers may choose as their business plan to provide certain services in certain areas without making a commitment to offer supported services as a viable competitive alternative throughout the ILEC service area. Second, a rational carrier will not be indifferent to whether a CETC has already been designated in a given service area, but will factor that information into its business case. A carrier considering entry as an ETC must consider the market share it expects to capture, the resulting unit costs to serve the area and the amount of support available. Because the market share and the resulting number of subscribers is a primary driver of unit costs, the existing mechanism is self-regulating to a significant degree. The market can be expected to limit the number of ETCs to the number that can be viable given the rural ILEC cost structure.

Although Mr. Cooper and Mr. Rozell expressed various concerns regarding the size of the federal universal service fund, Mr. Wood testified that the concerns are (1) not related to any of the specific characteristics of Dobson's Application or to any rural ILEC service area that is identified in Dobson's Application, and (2) to the extent they have any merit, the concerns are currently being addressed by the FCC and Joint Board in the proper forum. The Commission's task in this proceeding is to apply the ETC rules as they currently exist.

Finally, Mr. Wood addressed the concerns about "cream skimming" or "cherry picking." Mr. Wood testified that these concerns are typically associated with service area redefinition questions rather than ETC designation *per se*. In such cases the ILECs have incorrectly contended that when a carrier is attempting to receive ETC designation for an area for other than the rural ILECs whole study area there is a potential for the competitor to unfairly receive support based on the ILECs average costs while serving less costly areas.

Mr. Wood testified that there are at least four reasons why there is no legitimate "cream skimming" or "cherry picking" concern in this case. First, Dobson is making a commitment to serve the entire rural ILEC service areas identified in the Application. There can be no selective entry into, or targeting of, only low cost areas if all are being served. Second, Dobson has not made any request to redefine the rural ILEC service areas in this proceeding. Third, the FCC's rules provide an effective means of preventing such activity. 47 C.F.R. § 54.315 allows rural ILECs to disaggregate or target universal service support in order to better reflect geographic cost differences. This disaggregation would render "cream skimming" impossible. Finally, the "cream skimming" or "cherry picking" concern is vastly overblown as a practical reality. Even if Dobson were to divert considerable resources away from its business operation in order to attempt to exploit opportunities for geographic "cream skimming," Dobson would find it almost impossible to successfully accomplish its objective. Costs vary on a very discrete geographic scale, making it difficult to identify individual consumers that are "low cost" and thereby represent a "cream skimming" opportunity.

Robert Rozell testified on behalf of Beggs Telephone Company, Canadian Valley Telephone Company, Carnegie Telephone Company, and Oklahoma Telephone & Telegraph, Inc. (collectively referred to as the RTC's) on the designation of Dobson Cellular as an ETC for the purpose of receiving federal universal service funds. First and foremost, the RTC's position is that Dobson Cellular and any carrier requesting ETC status must meet all of the requirements set forth in the law, including meeting the public interest test if the carrier requests ETC designation in a rural telephone company's service area. Based upon the Application and Testimony filed by Dobson Cellular in this case, RTC does not believe that Dobson Cellular has met its burden of proof to be designated as an ETC. Further, the RTCs do not believe the grant of additional ETC's in rural study areas is in the public interest whether it is for the federal funds or for the various state funds; as long as the new designated ETC receives funding at the incumbent's cost level, as the current rules provide. Since Dobson Cellular is only required to provide service to customers where it chooses to serve

within its authorized service area, it was Mr. Rozell's opinion that Dobson Cellular will likely only overbuild the low cost areas and serve customers that can be served at a cost below the USF funds they would receive for the customer. Since building out a wireless network is generally less expensive than the costs of a comparable wireline network, mainly due to the acceptance of a lower quality of service, it is difficult to understand how it is in the public interest to allow a non-regulated carrier to receive revenues from ratepayers that are above the carrier's cost to provide telephone service.

Mr. Cooper testified that the Universal Service Funds have been designed to make sure that all Americans have the opportunity to access affordable high quality telecommunications services at reasonable prices and to ensure the regulated companies who have carrier of last resort obligations have the ability to recover their investments in the network to provide those services. It was his opinion that the use of quasi-public funds to encourage a perversely imbalanced "competition" in areas that cannot support a single provider, from the available customer revenue, cannot be in the public interest. This is especially true when the new competitor is a wireless provider who will be receiving USF funds well in excess of its costs to provide the service, and will likely cause a further imbalance in the extremely competitive wireless market in the area. Further, to fund a competitor in areas of ILECs that have a history of providing high quality services at reasonable prices, provides no additional consumer or public benefit. Dobson Cellular has not put on any evidence that the customers within the areas they are seeking designation as an ETC are not currently receiving the benefits of competition and that the goals and objectives of universal service are not currently being met. Section 254 of the Act sets forth the policies for the preservation and advancement of universal service. It requires that quality services should be available at just, reasonable, and affordable rates; that customers should have access to advanced telecommunications and information services; and, that customers, including low-income customers and those in rural, insular, and high cost areas should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services at rates that are reasonably comparable to those services provided in urban areas.

Mr. Cooper further explained that the goal of universal service is to ensure the high cost customer is served well at a reasonable cost to the public, not that one competitor receives funds in excess of its costs to provide services that are already available to customers. The RTCs have a history of providing high quality basic services and advanced services throughout the areas they serve, as well as being good corporate citizens to their communities. Dobson Cellular has not demonstrated that they can or will offer anything more than what is currently available at a reasonable price through existing wireline and wireless carriers, therefore there can be no overall public benefit to allow them to receive funds based on the RTC's cost to provide the supported services in addition to the funds they receive in billing the customers. The only real argument Dobson Cellular offers is that competition is self justifying and that they will bring new mobile services to the customer, which is not a service identified as supported by universal service funds. It is interesting to note that virtually all of the specific benefits Dobson Cellular identified are currently offered by one or more

competitors in the wireless marketplace today, without support. Despite Dobson Cellular's desire to have the Commission believe otherwise, there is a highly competitive market among telecommunications service providers in the State of Oklahoma including the RTC's service territories and the cellular nationwide one rate plans continue to cause declines in access minutes and even access lines for the RTCs. Once again, all of the benefits and supported services are being provided today without windfall "support" revenues to one or more competitors. The RTC's are only recovering a portion of their respective regulated cost through Universal Service funds and the company's investors and lenders still must bear significant portions of the risk of any investment decision and regulators have a say in any pricing decision, a consideration usually not required of a wireless carrier.

The RTCs also have concerns that funding in excess of costs will lead to irrational pricing and marketing decisions on the part of the carriers which are borne by the public at large. In some cases, it leads directly to predatory pricing by the zero cost carrier. In other cases, the excess charges are allowed to flow to the stockholders. Whichever result happens, it endangers the overall support system that allows the most remote of users to obtain telephone services. Those customers are usually left out in a competitive price conscious decision process. It would be irrational to do otherwise. One company cannot afford to spend \$50,000 to serve ten customers in a remote area for a support of \$250 per month when they can spend the same \$50,000 and serve 200 customers elsewhere in the same market area. Universal Service considerations are thrown out the window, just as they were when the markets were first established and AT&T chose not to serve customers located in high cost areas.

The RTCs believe the best resolution would be to deny the request until the Joint Board and the FCC complete their review of the current rules and approve new rules for ETCs to recover only their cost to provide the supported services. That would prevent customer dislocation from non-economic plans offered under these rules, such as has occurred in Oklahoma with the withdrawal of Southwestern Bell's unlimited intraLATA plans. Barring that, there is a very competitive wireless marketplace in Oklahoma today that would become decidedly uncompetitive should only one wireless carrier receive ETC designation to the exclusion of other wireless carriers making the same claims Dobson Cellular has made. To maintain wireless competitive neutrality, no wireless carrier should receive designation as an ETC or all carriers should become eligible telecommunications carriers upon their request and willingness to agree to the same terms and conditions.

Paul L. Cooper testified on behalf of the intervenor Rural Telephone Companies. He recommended that Dobson's Application for ETC designation be denied because Dobson does not meet the requirement to provide service throughout the rural ILECs service area as required by Section 214(e)(1) of the Act and the ETC application is not in the public interest as required by Section 214(e)(2) of the Act.

Mr. Cooper based his opinion upon the following factors:

(1) Dobson has not shown that it will provide reliable service throughout the entire service area of rural ILECs.

(2) Mr. Cooper's testimony shows in his Exhibits 2 and 3 that Dobson only provides service to a portion of the rural ILEC service areas for which Dobson holds a license.

(3) Dobson offers no proof of public interest benefits. If fact, Dobson's rates are anything but affordable and Dobson's service may not meet the intent of the low income toll blocking requirement.

(4) No public interest benefits will occur, as Dobson claims. The public interest benefits have already occurred as a result of current competition between wireline and wireless carriers and between wireless carriers, including Dobson. Lack of universal service funding has not been a barrier to wireless entry or competition.

(5) There are no consumer benefits, only an unnecessary burden on the federal fund. Rates will not be lowered, there will be no greater choice, there will be no additional improvements in efficiency or service quality, there will be no new technologies or advanced services and there will be no additional economic development.

(6) Dobson has no need for federal funding in Oklahoma to support its existing costs and it has no need for funding to make the facility improvements in Oklahoma it discusses in its testimony. Dobson's lower costs are not a sign of greater efficiency, but quite likely a demonstration that Dobson has chosen to serve only certain portions of rural ILEC service areas.

(7) Any Universal Service Funding Dobson receives is not needed to support its costs and thus will not be used only for the purposes of provisioning, upgrading and maintaining the costs of its Universal Services in Oklahoma, as required by the Act, Section 254(e).

(8) Federal support, if given to Dobson, will simply provide more resources to increase shareholder equity by making acquisitions, buying back stock and/or reducing debt. None of these uses are in accord with the purpose of such funding (i.e. to be used to maintain quality service with reasonable rates in high cost rural areas).

It was further the testimony of Mr. Cooper that designating Dobson as an ETC will not advance universal service as contemplated by the Act, but will simply advance the interests of Dobson's stockholders. Denial of ETC status for the reasons provided in his testimony is consistent with the Act and FCC rules and assures competitive and technological neutrality.

If the OCC does grant ETC status to Dobson, it should require that Dobson meet all of the safeguards and conditions set forth in Paragraph 22 of the OCC's Final Order in Cause No. PUD 980000470, dated April 11, 2001, in order to assure competitive and technological neutrality. As described in Exhibit 4 of Mr. Cooper's testimony, the OCC should also require additional quality of service and infrastructure reporting to insure that Dobson uses the funding it receives in rural high cost areas in Oklahoma, as it promised in its Application and testimony.

Barbara L. Mallett a Public Utility Regulatory Analyst for the Public Utility Division ("Staff") submitted prefiled testimony on behalf of Staff in Dobson's application for designation as an ETC under the provisions of OAC 165:55-17-29. She testified that Staff recommends the Commission establish Dobson's Oklahoma service territory as consisting of the entire study areas of the five rural ILECs in whose territories it seeks designation as an ETC, the entire study area of SBC Oklahoma and the entire study area of Valor Telecom. Staff also recommends that the Commission designate Dobson as an additional ETC throughout its Oklahoma service territory.

Ms. Mallett explained that Dobson requests to be designated as an ETC throughout the service territories of Beggs Telephone Co., Canadian Valley Telephone Co., Carnegie Telephone Co., Dobson Telephone Co., Oklahoma Telephone and Telegraph, Inc., Southwestern Bell Telephone Co. dba SBC Oklahoma and Valor Telephone Co. for purposes of seeking funds from only the Federal Universal Service Fund ("USF").

She further explained that the requirements for designation as an ETC are identical at both the state and federal levels. However, prior to receiving funding from the OUSF, a telecommunications services provider must be designated as eligible to receive funding pursuant to OAC 165:59-3-14.

It was Ms. Mallett's testimony that under OAC 165:59-3-14, for purposes of requesting funding from the OUSF, Dobson will be required to be certificated as a CLEC, provide its customers with a primary directory listing and access to telecommunications relay services for the hearing impaired; and be in compliance with all Commission rules for which a waiver has not been granted. Further, it may not begin to receive support until Dobson has its own facilities in place in Oklahoma, and may only receive funding for the portion of the facilities that it owns, maintains, and uses for regulated services. Under OAC 165:59-3-14(d)(1), the ETC may only request and receive funding from the OUSF if it provides Lifeline service or Special Universal Services. In addition, under OAC 165:59-3-14(d)(3), the ETC must accept carrier of last resort obligation.

Ms. Mallett testified that in Staff's opinion, Dobson meets all requirements for designation as an ETC for purposes of funding from the USF by this Commission. She outlined the six federal requirements for designation as an ETC as set out in 47 U.S.C. §214(e) and the manner in which Dobson meets each requirement as follows:



1. *Applicant must be a carrier as defined in 47 U.S.C. §153(10).* This section of federal code defines common carrier as "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio or interstate or foreign radio transmission of energy..." Dobson is an Oklahoma-based company that provides rural and suburban wireless communications services, either through its own license or by subsidiary licensees, to a total of 767,800 subscribers in portions of Alaska, Arizona, California, Kansas, Maryland, Michigan, Missouri, New York, Ohio, Oklahoma, Pennsylvania and Texas. Under FCC license it provides wireless digital voice and feature services using its own facilities or a combination of its own facilities and resale of the facilities of other wireless carriers in the following market areas in Oklahoma: the Enid MSA, Oklahoma 2 - Harper RSA, and Oklahoma 6 - Seminole RSA, and as managing general partner of both Oklahoma RSA 5, LP and Oklahoma RSA 7, LP, both of which hold FCC licenses for the provision of CMRS services, in the market areas of Oklahoma 5 - Roger Mills RSA and Oklahoma 7 - Beckham RSA. Dobson is in the process of updating its network to the Global System for Mobile Communications and General Packet Radio Service, which will enable it to offer enhanced data services. Dobson qualifies as a wireless common carrier under this definition.

2. *Applicant must have a service area established by the state regulatory commission.* Dobson currently has no service area in Oklahoma established by any authority other than the FCC. However, it has asked to adopt the entire study areas of

- Beggs Telephone Co.,
- Canadian Valley Telephone Co.,
- Carnegie Telephone Co.,
- Dobson Telephone Co.,
- Oklahoma Telephone & Telegraph, Inc., and certain wire centers served by Southwestern Bell Telephone Co. dba SBC Oklahoma and
- Valor Telephone Co.

Section 214(e) of the federal code defines service area and the establishment of such an area.

The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

In Staff's opinion, the Commission may establish an Oklahoma service area for Dobson consisting of the study areas of the five rural ILECs listed above, SBC Oklahoma, and Valor Telecom. Staff would like to point out that according to the colored map attached to the Application, Dobson Telephone Co.'s study area extends beyond Dobson Cellular's licensed service territory to the north and east. Also, Dobson Cellular's territory doesn't include the northeast corner of one SBC exchange. Staff questioned Dobson Cellular regarding how service will be provided in those areas. Dobson Cellular responded that it will serve those areas using roaming agreements. Staff recommends that the Commission establish Dobson's Oklahoma service territory as consisting of the entire study areas of the five rural ILECs listed above, and the designated wire centers of SBC and Valor.

3. *Applicant must offer the services that are supported by Federal universal service support mechanisms under 47 U.S.C. 254(c) throughout its service territory.* In its Application, Dobson stated that it provides each of the required services throughout its requested service area. In response to Staff's data request, Dobson committed to offer a Universal Service product, "The Breeze", that offers unlimited, flat-rated local service within the call areas where it is technically feasible.
4. *Applicant must not base its request for designation as an eligible carrier solely on resold services, but must have physical facilities in place.* Dobson stated in its Application that it provides wireless telecommunications services through a combination of its own CMRS facilities and those of its partners under license from the FCC. Therefore, it is Staff's opinion that Dobson fulfills this requirement.
5. *Applicant must advertise the availability of such services and the charges therefore using media of general distribution.* Dobson submitted examples of its current product advertising with the Prefiled Direct Testimony of Thomas A. Coates. Staff examined these and found that they contain satisfactory product descriptions and clearly state the associated rates for each product. Dobson has also committed to advertise all of its Universal Service products in media of general distribution as it currently advertises its other products. Staff believes that the examples of advertising and Dobson's commitment to continue to use media of general distribution for all of its products is sufficient to fulfill this requirement.
6. *The state commission must find that the designation of Dobson as an ETC is in the public interest if the designation is for an area served by a rural telephone company.* With regard to designation of U.S. Cellular in the requested portion of SBC Oklahoma's and Valor Telecom's service territories, no public interest finding is required. Such a finding is required in the case of designation within each rural ILEC's study area, however. In its Application, Dobson argued that one of the principle goals of the Telecommunications Act of 1996 is to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the

rapid deployment of new telecommunications technologies." While it is important to note that creation of competition alone is inadequate for the public interest finding, Staff believes encouragement of both competition and access to new technologies is adequate for such a finding. Dobson can provide access to wireless telecommunications services, provide consumers with a choice between universal service providers, offer a variety of functions and services not typically available to traditional land line subscribers, and offer consumers expanded mobility and toll-free calling areas. Therefore, Staff believes that it serves the public interest to designate Dobson as an ETC throughout the service areas it has proposed.

Ms. Mallett further testified that in Cause No. PUD 98-470, GCC License Corp. was designated an ETC by this Commission for the purpose of combined state and federal support in the absence of certification, product descriptions and rates, the required advertising, and any commitment to provide advertising or a proposed tariff for review and/or approval. Staff believes that failure to designate Dobson would be inconsistent with the precedent established in Cause No. PUD 98-470 for designating a wireless carrier as an ETC contingent upon meeting all federal requirements prior to an application for funding from either the USF or the OUSF.

It was further the testimony of Ms. Mallett that the FCC has found it appropriate to designate additional ETCs in rural and high cost areas in spite of the disparate cost to provide service between wireless and wireline technologies, and such related issues as sustainability of the Universal Service Fund, rural "cream-skimming", and service of only a partial service area by a proposed ETC. In its December 4, 2002, Order in Docket DA 02-3317, Cellular South License, Inc. ("Cell South") Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama, the FCC designated Cell South as an ETC and made the following comments in paragraph 32.

We recognize that these parties raise important issues regarding universal service high-cost support. We find, however, that these concerns are beyond the scope of this Order, which designates a particular carrier as an ETC. We note that the Commission has recently requested the Joint Board to provide recommendations on the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing service, as well as the Commission's rules regarding support for second lines.<sup>1</sup>

Therefore it was Staff's opinion that designation of Dobson as an ETC throughout the entire study areas of the five rural ILECs identified in the application, as well as the requested wire centers of SBC and Valor, is consistent with both the OCC's past decisions and the FCC's handling of such critical issues as those being addressed by the Joint Board in response to the FCC's request for recommendations.

<sup>1</sup> Federal-State Joint Board on Universal Service, CC Docket 96-45, FCC 02-307, Order (released November 8, 2002).

### General Background

Dobson seeks designation as ETC in order to obtain federal universal support mechanisms for providing phone service within certain wire centers of SBC and Valor and the service areas of 5 rural telephone companies<sup>2</sup> (referred to hereafter as the "Rural Telephone Companies"). Section 254(e) of the Telecommunications Act of 1996 ("the Act") provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."

The requirements for designation of an ETC are identified in section 214 (e)(1) of the Act.<sup>3</sup>

First, a common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area.<sup>4</sup> The ETC must offer such services either using its own facilities or a combination of its own facilities and resale of another carrier's services.<sup>5</sup> The services that are supported by the federal universal service support mechanisms are defined as: (1) voice grade access to the public switched network;<sup>6</sup> (2) local usage;<sup>7</sup> (3) Dual Tone Multi-frequency (DTMF) signaling or its functional equivalent;<sup>8</sup> (4) single-party service or its functional equivalent;<sup>9</sup> (5) access to emergency services including 911 and enhanced 911;<sup>10</sup> (6) access to operator

<sup>2</sup> The Application requests ETC designation in the study areas of the following rural telephone companies: Beggs Telephone Company, Inc., Canadian Valley Telephone Company, Carnegie Telephone Company, Dobson Telephone Company and Oklahoma Telephone & Telegraph, Inc.

<sup>3</sup> The analysis of section 47 U.S.C. § 214 (e)(1) is taken from the Joint Board Recommended Decision issued February 27, 2004 in CC Docket No. 98-45 at paragraph 19.

<sup>4</sup> 47 U.S.C. § 214 (e)(1)(A).

<sup>5</sup> *Id.* An entity that offers the supported services exclusively through resale shall not be designated as an ETC. See 47 C.F.R. § 54.201(l).

<sup>6</sup> "Voice grade access" is defined as a "functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call."

<sup>7</sup> "local usage" means an "amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users." 47 C.F.R. § 54.101(a)(2).

<sup>8</sup> "Dual tone multi-frequency" (DTMF) is defined as a "method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time." 47 C.F.R. 54.101(a)(3).

<sup>9</sup> "Single-party service" is defined as "telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission." 47 C.F.R. § 54.101 (a)(4).

<sup>10</sup> "Access to emergency services" includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. "911" is defined as a "service that permits a telecommunications user, by dialing the three-digit code "911," to call emergency services through a Public Service Access Point (PSAP) operated by the local government." "Enhanced 911" is defined as "911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party." "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local

services;<sup>11</sup> (7) access to interexchange services;<sup>12</sup> (8) access to directory assistance;<sup>13</sup> and (9) toll limitation for qualifying low-income customers.<sup>14</sup> Second, throughout the service area for which designation is received, the ETC must advertise the supported services and the charges therefore using media of general distribution.<sup>15</sup> Pursuant to section 214(e)(1)(B), an ETC is required to advertise the availability and prices charged for the services that are supported by federal universal service support.<sup>16</sup> An ETC must also advertise the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services.<sup>17</sup>

Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC).<sup>18</sup>

Section 214(e)(2) of the Act gives state commissions the primary responsibility for evaluating requests for an ETC designation. Under section 214(e)(2), "[u]pon request and consistent with the public interest, convenience, and necessity, the State

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government in an eligible carrier's service area has implemented 911 or enhanced 911 systems. 47 C.F.R. § 54.101(a)(5).

<sup>11</sup> "Access to operator services" is defined as "access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." 47 C.F.R. § 54.101(a)(6).

<sup>12</sup> "Access to interexchange service" is defined as the "use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network." 47 C.F.R. § 54.101(a)(7).

<sup>13</sup> "Access to directory assistance" is defined as "access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings." 47 C.F.R. § 54.101(a)(8).

<sup>14</sup> "Toll limitation" means either toll blocking or toll control for ETCs that are incapable of providing both services. For ETCs that are capable of providing both services, "toll limitation" means both toll blocking and toll control. 47 C.F.R. § 54.101(a)(9) and 54.000(d). "Toll blocking" is a service provided by carriers that allows consumers to elect not to allow the completion of outgoing toll calls from their telecommunications channel. 47 C.F.R. § 54.400(b). "Toll control" is a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle. 47 C.F.R. § 54.400(c).

<sup>15</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>16</sup> *Id.*

<sup>17</sup> 47 C.F.R. §§ 54.405(b) and 54.411(d). Lifeline is a program that provides discounts to consumers on their monthly telephone bills. See 47 C.F.R. §§ 54.401-54.409. Link Up helps consumers with telephone installation costs. See 47 C.F.R. §§ 54.411-54.415. In its *Twelfth Report and Order*, the Commission created a fourth tier (\$25.00 per month) of federal Lifeline support and established additional Link-Up support (\$70.00 per consumer) which is available to ETCs serving qualifying low-income individuals living on tribal lands.....

<sup>18</sup> 47 U.S.C. § 214(e)(1). The "service area" is the geographic area established by the state commission for the purposes of determining universal service support obligations and support mechanisms. 47 U.S.C. § 214(e)(5). In the case of an area served by a rural carrier, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier" for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1). Section 214(e)(2) further states: "[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest." (*emphasis added*)

#### **Findings of Fact and Conclusions of Law**

Dobson filed an Application seeking designation as an ETC ("Application") on May 2, 2003, which states that Dobson is seeking ETC status for the purpose of receiving federal Universal Service Fund support only. The Application and testimony of Dobson indicate Dobson does not seek funding from the Oklahoma Universal Service Fund ("OUSF") and the ALJ finds that Dobson must meet the requirements of OAC 165:59 prior to receiving support from the OUSF.

With regard to designation as an ETC within the non-rural service areas of SBC Oklahoma and Valor, the ALJ finds that no party opposed the designation of Dobson as an ETC in the service areas of SBC Oklahoma and Valor. Because section 214 (e)(2) requires that the Commission designate more than one ETC within the service area of a non-rural telephone company upon request, the ALJ finds that the Commission should designate Dobson as an ETC within the requested service areas of SBC Oklahoma and Valor.

In determining whether to grant ETC status to a telecommunications carrier such as Dobson within the service area of one or more rural telephone companies, the Commission must first determine whether the carrier seeking ETC status meets the requirements for ETC designation. Secondly, the Commission must determine whether it is in the public interest to grant ETC status to a carrier other than the incumbent Rural Telephone Companies.

The Parties to this Cause signed a Stipulation which set forth the requirements with which Dobson agrees to comply, if designated an ETC by the Commission.

The ALJ commends the parties for reaching a Stipulation in this Cause, and for the thoroughness of the customer service safeguards to which Dobson has agreed.

A determination that it is in the public interest to designate an additional ETC within the service area of each Rural Telephone Company that signed the Stipulation requires an analysis of many factors. The testimony filed by several of the parties prior to reaching a Stipulation, indicates some parties initially believed that it was not in the public interest to designate an additional ETC within the service areas of the Rural Telephone Companies.

In 2001, the Commission designated GCC Wireless ("GCC") as an ETC subject to its compliance with certain specified conditions. GCC appealed the Commission's designation, arguing that the state lacked jurisdiction to regulate the entry of a provider of Commercial Mobile Radio Service ("CMRS") into Oklahoma or the rates charged for any CMRS product. The Court of Civil Appeals for the State of Oklahoma, Division IV, upheld the Commission in an unpublished decision filed November 12, 2002. The Court of Civil Appeals stated: "We hold that the conditions under review do not 'regulate the entry of or the rates charged' by GCC for its general commercial mobile radio services, but instead, are permissible 'terms and conditions' for GCC to undertake the provision of universal, subsidized basic local telephone services."<sup>19</sup>

The Stipulation in this Cause indicates that Dobson should be designated an ETC because it meets or has agreed to meet certain specific conditions as a prerequisite to being designated an ETC. Many of the requirements are the same conditions placed upon GCC. In 2001, when the Commission approved ETC designation for GCC, the Commission stated that designation of GCC as an ETC would provide greater customer choice and the benefits of competition to consumers within these rural study areas by adding an additional universal service provider in such areas. Such choice and competition benefits were hoped to bring new telecommunications services and a more rapid deployment of new technologies in rural areas of the State and it was believed the choice and competition should lead to better service for Oklahoma's rural customers.<sup>20</sup>

Since 2001, there have been a number of clarifications in orders issued by the FCC regarding the Universal Service Fund and the designation of a CMRS provider as an ETC in both rural and non-rural areas. In addition, the Commission adopted new rules, which became effective July 1, 2004, regarding the requirements to be met by a CMRS provider that is granted ETC status.<sup>21</sup> In light of the new rules, recent FCC orders and the ever growing size of the federal universal service fund, the ALJ believes the Commission should look closely at the criteria utilized for determining whether it is in the "public interest" to grant ETC designation to an additional telecommunications provider in the territory of the Rural Telephone Companies.

Applying the requirements of 47 U.S.C. § 214(e)(1) to Dobson, the ALJ finds:

1. Dobson is a common carrier. Dobson states that it will provide the services supported by the federal universal service mechanisms throughout the designated service area.

<sup>19</sup> *GCC License Corporation vs. Oklahoma Corporation Commission and the State of Oklahoma*, Court of Civil Appeals of the State of Oklahoma, Division IV, Case No. 96,260. Order issued November 12, 2002.

<sup>20</sup> Order No. 450765 issued April 11, 2001 in Cause No. PUD 980000470 at paragraph 19.

<sup>21</sup> OAC 165:55-23-1 et seq. establish service standards for Wireless Eligible Telecommunications Carriers. These standards are applicable however, only to the provision of "Lifeline Service" and "Link Up" by designated wireless ETCs.

2. Dobson will provide the services supported by the federal universal service mechanisms by Dobson either using its own facilities (includes the facilities of Dobson Cellular and CellularOne) or a combination of its own facilities and resale of another carrier's wireless facilities.

3. Dobson states it will advertise the availability of the supported services and the charges therefore, using the same type of advertising media it utilizes for its current wireless services.

4. The ETC service area for Dobson would be the study area of the 5 Rural Telephone Companies and wire centers of SBC and Valor, as identified in Exhibit A, Part II attached to the Application of Dobson. Dobson is authorized to provide commercial mobile radio service ("CMRS") and/or Personal Communications Service ("PCS") within the service area of each of the 5 Rural Telephone Companies and the designated wire centers of SBC and Valor.

The FCC, issued a decision January 22, 2004, which should be considered by the Oklahoma Commission in determining whether to grant ETC status to Dobson. In the case of *In the matter of Federal-State Joint Board on Universal Service Virginia Cellular, L.L.C. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, the FCC stated:

While we await a recommended decision from the Joint Board, we acknowledge the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas. ***The framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission.*** We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame. Further, in this Order, we impose as ongoing conditions the commitments Virginia Cellular has made on the record in this proceeding. These conditions will ensure that Virginia Cellular satisfies its obligations under section 214 of the Act. We conclude that these steps are appropriate in light of the increased frequency of petitions for competitive ETC designations and the potential impact of such designations on consumers in rural areas.<sup>22</sup> *(emphasis added)*

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<sup>22</sup> FCC decision in CC Docket No. 96-45 released January 22, 2004, at paragraph number 4.



The 9 services that are supported by the federal universal support mechanisms are identified in detail above, in the portion of this ALJ report identified as "General Background." The ALJ finds that the Commission should establish a guideline for "local usage" and require Dobson to meet the local usage guideline for its LifeLine and basic universal service products, as a condition of being designated an ETC. The FCC has not established a specific number of local minutes that must be included in a universal service product. The ALJ finds that Dobson should be required to include 1000 minutes per month of "local usage" in its universal service and LifeLine products. The local usage minutes should be available at any time of the day or week, without incurring additional charges above the basic universal service plan cost. One of the main complaints at the Commission in recent years has been the high cost of telephone service between customers located within a few miles of each other in rural areas. The rate plans attached to the testimony of Thomas A. Coates in this Cause indicate that Dobson will offer a local usage plan that includes at least 1000 minutes per month of "local usage, provided the customer is willing to pay \$59.99 per month for the service. There are several regional long distance plans to which "Nights and Weekend Minutes" could be added, thereby increasing local service minutes by 3000 - 4000 minutes per month. However, the usage available from the "Nights and Weekend Minutes" will only be available at night and on weekends and will add \$9.99 a month to the service plan. It is unclear from the service plans attached to the testimony of Mr. Coates whether "Nights and Weekend Minutes" can be added to the \$29.99 Local Digital Plan that currently includes only 500 minutes per month usage, with additional minutes costing 39 cents per minute. It therefore appears that the least cost plan available as a universal service product (provides the 9 services supported by the federal USF and includes at least 1000 minutes of local usage per month) will cost about \$59.99 per month before taxes and regulatory fees. The ALJ finds that a basic local service plan that is priced at \$59.99 per month before taxes and regulatory fees is not comparable to the basic local service available in the non-rural areas of the State. Although Dobson may offer larger toll free calling areas than those provided by the wireline carrier, if the customer doesn't have access to sufficient minutes of local usage within the standard price of their universal service product, the benefits of the universal service product provided by Dobson will quickly be offset by additional airtime charges for local calls or the use of all the "free long distance" for calls made within the current local calling scope of the customer.

In granting the petition of Virginia Cellular for designation as an ETC, the FCC found that it was sufficient that Virginia Cellular demonstrated that it would offer minimum local usage as part of its universal service offering. The FCC found that although the Commission did not set a minimum local usage requirement in the *Universal Service Order*, it determined that ETCs should provide some minimum amount of local usage as part of their "basic service" package of supported services. Virginia Cellular stated it would comply with any and all minimum local usage requirements adopted by the FCC. It also indicated it would meet the local usage requirements by including a variety of local usage plans as part of a universal service offering. In addition, Virginia Cellular stated that its current rate plans include access to the local exchange network, and that many plans include a large volume of minutes.

Therefore, the FCC found that Virginia Cellular's commitment to provide local usage was sufficient.<sup>23</sup>

In CC Docket No. 96-45, the Federal-State Joint Board on Universal Service ("Joint Board") issued a recommended decision on February 27, 2004 ("Joint Board recommendation") regarding the process for designation of eligible telecommunications carriers ("ETCs"). Although the Federal Communications Commission has not yet specifically addressed the recommendation of the Joint Board, the ALJ believes the recommended decision of the Joint Board offers guidance for determining whether it is in the "public interest" to designate an ETC other than the ILEC in a rural area.

The Joint Board Recommendation noted that although the FCC has not yet established a minimum local usage requirement, there is nothing in the Act, the FCC's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status. As determined by the Fifth Circuit in *TOPUC v. FCC*, 183 F.3d 393, states may establish their own eligibility requirements for ETC applicants. In determining that unlimited local usage should not be added to the list of services supported by federal universal service, the FCC found that the states are in a better position to determine whether unlimited local usage offerings are beneficial in particular circumstances.<sup>24</sup>

The ALJ finds that if the FCC or Oklahoma Corporation Commission in the future establishes a different minimum number of local usage minutes, the amount established by the FCC or Oklahoma Corporation Commission should be the requirement to be met by Dobson, rather than the 1000 minutes recommended by the ALJ.

In determining whether designation of Virginia Cellular as an ETC would serve the public interest, the FCC considered whether the benefits of an additional ETC in the wire centers for which Virginia Cellular sought designation as an ETC would outweigh any potential harms. The FCC noted that this balancing of benefits and costs is a fact-specific exercise.

In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.<sup>25</sup>

<sup>23</sup> *Id.* at paragraph 20.

<sup>24</sup> Joint Board Recommendation released February 27, 2004, at paragraph 35.

<sup>25</sup> FCC decision in CC Docket No. 96-45 regarding Virginia Cellular, L.L.C.'s petition for designation as a ETC, at paragraph 28.

The FCC further indicated that as part of a pending docket regarding high-cost support in competitive areas, the FCC might adopt a different framework for the public interest analysis of ETC applications.<sup>26</sup>

The need to balance benefits and costs in determining whether it is in the public interest to designate an additional ETC within the territory of a rural carrier was also addressed by the Joint Board. The Joint Board Recommendation points out that

"[b]ecause an ETC must be prepared to serve all customers within a designated service area, and must be willing to be the sole ETC should other ETCs withdraw from the market, states may appropriately establish minimum qualifications focused on the carrier's ability to provide the supported services to all consumers in the designated area upon reasonable request. Guidelines encouraging a rigorous application process are appropriate because section 214(e)(2) requires that designation of an additional ETC serve the public interest. Consistent with Section 254(b)(3) of the Act, we believe that a rigorous application process ensures that consumers in all regions of the nation, including rural and low-income consumers, have access to telecommunications services that are reasonably comparable to services provided in urban areas."<sup>27</sup>

The Joint Board Recommendation further urges that a specific, fact-intensive inquiry be utilized to analyze the public interest when evaluating an ETC application for a rural area. An analysis which only cites generalized benefits of competition when evaluating an ETC application is not sufficient by itself to establish public interest. Section 214 (e)(2) requires states to undertake a fact-intensive analysis to ensure that the designation of any additional ETCs will promote the goals set forth in section 254 of the Act in the affected area.<sup>28</sup>

The ALJ finds that the criteria to be considered in determining whether designation of more than one carrier as an ETC in a rural area is "in the public interest" include:

1. Will the public receive a benefit from the designation of another carrier as an ETC in this service area (e.g. will competition lower the cost of basic local service or encourage the provisioning of advanced services?)
2. Will the goal of universal service be advanced by the designation of another carrier as an ETC in this service area? (e.g. will more customers be connected to the telecommunications network as a result of designating another ETC in this service area?)

<sup>26</sup> Joint Board Recommendation released February 27, 2004, at paragraph 28.

<sup>27</sup> Joint Board Recommended Decision issued February 27, 2004 in CC Docket No. 96-15, at paragraph

11.

<sup>28</sup> *Id.* paragraph 12.

3. Will customers who do not have telephone service from the ILEC be able to obtain telephone service as the result of the designation of the carrier as an ETC? (e.g. will the customer have the ability to get telephone service in a location not currently served by the wireline company)
4. Will there be any adverse effect upon the public by the designation of another carrier as an ETC in this service area? (e.g. will the additional cost to the federal universal service fund be sufficiently offset by the benefits realized by the public as the result of designating a second ETC within a service area?)

The ALJ finds that Dobson is already authorized to provide telecommunications services within the service territory of the 5 Rural Telephone Companies. Designation as an ETC will enable Dobson to receive federal universal support for providing universal service, which may encourage Dobson to build out its network in order to provide service to areas that don't currently have access to high quality telecommunications services. In the absence of designation as an ETC, Dobson will continue to make a business decision on whether to provide service in a particular area without regard to the potential receipt of universal service support.

Based upon the entire record in this Cause and the clarifications made by the FCC and the Commission since the time of the November 19, 2003 hearing, the ALJ finds that it is not in the public interest to designate an additional ETC within the service area of the 5 Rural Telephone Companies unless certain criteria are agreed to be met by the additional ETC. The 5 Rural Telephone Companies provide high quality service to their customers at affordable rates. They make advanced services available to their customers when it is economically and technically feasible to do so. Competition, in and of itself, is an insufficient reason to designate an additional ETC within the service territory of a rural carrier.

The 5 Rural Telephone Companies provide service within an area of the state where most of the counties<sup>29</sup> are considered "tribal land" for the purpose of obtaining Tier IV support for LifeLine and Link-Up service.<sup>30</sup> The availability of Tier IV support for LifeLine and Link-Up customers is currently sufficient to provide \$1 per month basic telephone service to qualifying low-income customers served by the ILEC. Therefore, within the service areas served by the 5 Rural Telephone Companies, it is more likely that unavailability of service rather than monthly cost is the constraining factor that prevents qualifying low-income customers from being subscribed to basic local telephone service.

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<sup>29</sup> The 5 Rural Telephone Companies provide service within a part of the following Oklahoma counties: Beckham, Caddo, Dewey, Hughes, Okmulgee, Pittsburg, and Roger Mills.

<sup>30</sup> An internet search of the Internal Revenue Service Web site ([www.irs.gov](http://www.irs.gov)) for "Former Indian Reservations in Oklahoma" yields the geographic boundaries of tribal lands within Oklahoma. Said document is attached hereto as "Attachment B."

Customers receiving services supported by the federal USF in a rural service area should receive all customer protection benefits that are afforded customers of the ILEC. In the absence of customer protection that is comparable to the customer protections required of the ILEC by the Commission's rules set forth in OAC 165:55, the customer of the wireless ETC will not be receiving service that is comparable to the service available to urban customers. It is not in the public interest to designate an additional ETC within the service areas of the 5 Rural Telephone Companies unless the customers receive services similar to those available in urban areas, which include at least 1000 minutes per month local usage, available at any time of the day or week, for a price that is not more than 10 per cent above the highest local exchange rate charged to residential customers in the State of Oklahoma by any ILEC or CLEC. In the absence of service priced within these guidelines, the ALJ finds the service is not "comparable" to the service available in urban areas.

The ALJ finds it is there will be public benefit received by customers within the service area of the 5 Rural Telephone Companies, thereby making it in the public interest to designate Dobson as an ETC in the service area of the 5 Rural Telephone Companies *only if the following conditions are met:*

1. Dobson shall comply with all the requirements set forth in the Stipulation presented to the ALJ on November 19, 2003, and filed herein on December 4, 2003. Said Stipulation is attached hereto as "Attachment A."

2. Dobson shall furnish the Director of the Public Utility Division copies of its universal service offerings for which Dobson seeks federal universal service support, within 180 days of the Commission Order granting Dobson ETC status, or at least 30 days prior to commencing to provide the supported services, whichever shall occur first. Failure to submit the required tariffs within 180 days of ETC designation may result in revocation of the ETC designation for Dobson, after notice and hearing.

3. Dobson shall agree to be bound by the requirements of OAC 165:55-23-1 *et seq.* with regard to all of its product offerings for which it seeks funding from the federal universal service fund; not just for its Lifeline and Link Up services.

4. Dobson shall include a minimum of 1000 minutes per month of "local usage" within its universal service product. The local usage minutes should be available at any time of the day or week, without incurring additional charges above the basic universal service plan cost.

5. Dobson shall agree to accept carrier of last resort responsibility within the service area for which it is granted ETC designation.

An Application filed by United States Cellular Corporation is pending for designation as an ETC within the service areas of Beggs Telephone Company,

Canadian Valley Telephone Company and Oklahoma Telephone and Telegraph, Inc.<sup>31</sup> The ALJ therefore finds that the public interest is only met if the Commission grants ETC designation to any other wireless carrier providing service within the service area of the 5 Rural Telephone Companies; provided the wireless carrier makes application for ETC status and agrees to be bound by the same requirements set forth herein for Dobson.

**Recommendation of the Administrative Law Judge**

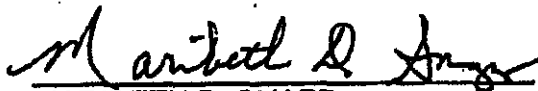
The ALJ recommends the Commission grant Dobson ETC status within the requested wire centers served by SBC Oklahoma and Valor.

The ALJ further recommends the Commission find it is in the public interest to grant Dobson ETC status within the service areas of the 5 Rural Telephone Companies, only if Dobson agrees to meet the criteria set forth above. If Dobson is unable or unwilling to meet the above criteria, the Commission should grant Dobson ETC designation only within the requested areas of SBC Oklahoma and Valor, but deny Dobson ETC designation within the service areas of the 5 Rural Telephone Companies. In the absence of these criteria being met, it is not in the public interest to designate an additional ETC within the service areas of the 5 Rural Telephone Companies, because the customers will not gain a sufficient benefit unless Dobson is obligated to build out its system to serve customer locations not currently able to obtain any type of telephone service and is obligated to subject itself to the customer complaint protections available to customers that obtain service from the incumbent Local Exchange Carrier.

The 5 Rural Telephone Companies need funds from the federal universal service fund in order to be able to afford to provide high quality service within their respective service areas, due to the lack of customer density within the service areas. The use of quasi-public funds to encourage "competition" in areas that cannot support a single provider from the available customer revenue, cannot be in the public interest, unless the additional ETCs are able to provide the services supported by the federal universal service fund in locations not otherwise available from the incumbent wireline provider.

If the above criteria are agreed to by Dobson, the ALJ recommends the Commission designate Dobson as an ETC within the service area of the 5 Rural Telephone Companies.

Respectfully submitted this 7<sup>th</sup> day of July, 2004.

  
MARIBETH D. SNAPP  
Administrative Law Judge

<sup>31</sup> See PUD 200300195, Application of United States Cellular Corporation for designation as an eligible telecommunications carrier pursuant to the Telecommunications Act of 1996.

**BEFORE THE CORPORATION COMMISSION  
OF THE STATE OF OKLAHOMA**

APPLICATION OF DOBSON CELLULAR  
SYSTEMS, INC. FOR DESIGNATION AS  
AN ELIGIBLE TELECOMMUNICATIONS  
CARRIER PURSUANT TO THE  
TELECOMMUNICATIONS ACT OF 1996

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Case No. 200300239



**STIPULATION**

As a condition to its designation as an eligible telecommunications carrier ("ETC"), Dobson Cellular Systems, Inc. and its subsidiary licensees, including Oklahoma RSA 5 Limited Partnership and Oklahoma RSA 7 Limited Partnership (collectively, "Dobson"), shall meet the following requirements:

**1. Customer Requests for Service.**

If Dobson determines that it cannot provide service within its designated service areas, Dobson is required to extend its network to serve new customers upon a bona fide reasonable request. Dobson shall have 90 days from the day of the request to provide service or seek a waiver of such requirement from the Commission. Upon notice and hearing, the Commission shall determine if such waiver shall be granted. Upon the filing of an Application for Waiver, Dobson shall provide a copy of the Application filed with the Commission to the rural telephone company ("RTC") in whose service territory the waiver is sought.

**2. Reporting of Universal Service Offerings**

Dobson shall furnish to the Director of the PUD copies of its universal service offerings for which Dobson seeks universal service funding at the time such service offerings are offered to the public. Each such submission shall include a affidavit from an authorized Dobson representative that the service offering contains all of the terms, conditions and rates for each offering and that Dobson's service offerings contain the supported services required under 47

U.S.C. § 214(e) and the regulations of the Federal Communications Commission ("FCC") for the receipt of universal service funds. Dobson shall file a tariff with the Commission for Lifeline and Link-up services in conformance with the federal Lifeline and Link-up standards set forth in 47 C.F.R. § 54.400-54.415. The Commission shall have no more than 90 days after filing to issue its order approving or disapproving the tariff.

**3. Reporting of Utilization of USF Funds.**

Dobson shall file with the Commission an annual report, at a time and in a format determined by the Commission for all designated ETCs, certifying that it has and will continue to use federal universal service funds for the purposes intended as set forth in 47 U.S.C. § 254(e) and the applicable FCC's rules. To the extent required by the Commission, Dobson shall include in the report the amount of federal universal service funds received, a description of how such funds have been used and a certification that such funds have been used only for the provision, maintenance and upgrading of facilities and services for which the support is intended. Dobson shall make available all documents and other information regarding such expenditures to the Commission, for verification and audit.

**4. Customer Complaints and Customer Service.**

(a) For each rate plan offered to its consumers, Dobson will make available to consumers in collateral or other disclosures at the point of sale and on its website applicable information relating to the calling area for the plan, termination penalties, monthly access fee or base charge, air time minutes included in the plan and other information relating to the rates, charges, and other terms and conditions of service.



(b) Dobson will make available at the point of sale and on its website maps depicting the approximate voice service coverage applicable to each of its service offerings. Dobson will periodically update such maps as necessary to keep them reasonably current.

(c) Dobson will provide or confirm the material terms and conditions of service with the subscriber when a customer initiates service or agrees to a change in service.

(d) When a customer initiates service within Dobson's designated service areas, the customer will be informed of and given a period of not less than fourteen (14) days to try out the service. Dobson will not impose an early termination fee if the customer cancels service within this period; provided that the customer complies with any applicable return and/or exchange policies. Other charges, including air time usage, may still apply.

(e) Dobson will distinguish on customers' bills the monthly charges for service and features, and other charges collected and retained by Dobson, from taxes, fees and other charges collected by Dobson and remitted to federal, state or local governments.

(f) Dobson will respond in writing to the Commission within thirty (30) days of receiving a written consumer complaint from the Commission.

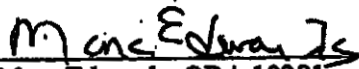
(g) On a quarterly basis, Dobson will furnish to the Director of the PUD a copy of all Notices of Informal Complaint received from the FCC involving Oklahoma customers within Dobson's designated service areas and a copy of Dobson's response to the FCC.

(h) Dobson will provide each customer within its designated service areas customer service 24x7x365, which is reachable by dialing \*611 on the cellular handset (and not counting against air time minutes of use) or dialing a toll free number. Customer service contact information will be provided to customers online and on billing statements.

(i) Dobson will maintain records of customer trouble reports and will furnish to the Director of the PUD upon request a summary of complaints from its Network Trouble Ticket System.

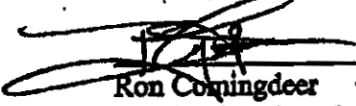
5. Dobson shall continue to be under the jurisdiction of the Commission for the Commission to evaluate its continuation of status as an ETC. If determined necessary by the Commission, a status conference will be set after notice to interested parties.

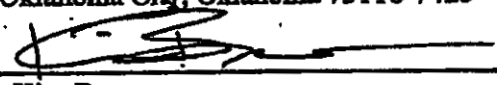
Respectfully submitted,

  
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